

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HUNG HA,

Plaintiff,

No. C 14-80280 MISC PJH

v.

**ORDER DENYING MOTION FOR
NUNC PRO TUNC ORDER**

DOES 1 THROUGH 5,

Defendants.

Plaintiff Hung Ha ("plaintiff") filed the instant complaint on October 6, 2014, along with an application to proceed in forma pauperis ("IFP"). On November 13, 2014, the court issued an order noting that plaintiff had previously been adjudged a vexatious litigant, and as a result, his filings were subject to pre-filing review.¹ See Dkt. 2. The court reviewed the complaint and found that it failed to state a claim, and thus dismissed the complaint with leave to amend. Plaintiff chose not to file an amended complaint in response to the court's order, and instead filed a number of other documents, including a "statement of disqualification," which the court construed as a motion for recusal. After reviewing plaintiff's filings, the court dismissed the action without leave to amend. To clarify, because plaintiff's filings were subject to pre-filing review, the dismissal had the effect of causing the complaint not to be filed in the first place and was intended as a final order of dismissal, and a final judgment was entered on the same day.

Plaintiff then filed a motion for nunc pro tunc order, requesting that the court amend its order to state that the dismissal is without prejudice. Plaintiff argues that a dismissal

¹The court also notes that the pre-filing review order was affirmed by the Ninth Circuit. See Ha v. U.S. Atty. Gen., N.D. Cal. Case No. 09-5281, Docket No. 291.

1 without prejudice “would be appropriate and necessary in aid of the court’s jurisdiction . . .
2 and in furtherance of justice and due-process administration of law.”

3 The court notes that, in addition to this complaint, plaintiff has filed four previous
4 complaints regarding his alleged mistreatment at the University of California Berkeley’s
5 Recreational Sports Facility. See Ha v. Rojas, 14-80305; Ha v. Maddy, 13-80283; Ha v.
6 Celaya, 12-80244; Ha v. Sweet B., 09-1392. None of these cases have progressed past
7 the pleading stage. Based on these cases, the court finds that plaintiff has had more than
8 sufficient opportunity to pursue his claims. The court finds that plaintiff has not
9 demonstrated any basis for granting him yet another opportunity to amend his proposed
10 complaint, and thus, plaintiff’s motion for nunc pro tunc order is DENIED.

11 Plaintiff has also filed a motion for leave to appeal the denial of in forma pauperis
12 (“IFP”) status. However, because plaintiff’s proposed complaint was never filed, no filing
13 fee is due, and thus, plaintiff’s IFP application is moot. Accordingly, plaintiff’s motion for
14 leave to appeal the denial of IFP status is similarly DENIED as moot.

15 Finally, plaintiff has filed a request for permission to file electronically. Because
16 plaintiff’s complaint was ordered not to be filed, his request is DENIED as moot. This order
17 finally adjudicates all motions appearing on the court’s docket as of the date of this order.

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19 **IT IS SO ORDERED.**

20 Dated: February 13, 2015

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23 PHYLLIS J. HAMILTON
24 United States District Judge
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